

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	<b>CR. NO. 02-00550 HG</b>
	)	
Plaintiff,	)	<b>DECLARATION OF COUNSEL</b>
	)	
vs.	)	
	)	
ERIC K. HO,	)	
	)	
Defendant.	)	
_____	)	

**DECLARATION OF COUNSEL**

I, ARTHUR E. ROSS, declare as follows:

1. On May 15, 2006 I was appointed the CJA panel attorney for purpose of appeal or other post-sentencing proceedings on behalf of Eric K. Ho. The Defendant was sentenced on March 3, 2006 to 180 months incarceration, following a change of plea on September 30, 2005 to a charge of distributing 50 grams or more of crystal methamphetamine (ice) in violation of 21 U.S.C. §§ 841 A (1), B (1) (A) and 846.

2. I represented the defendant in 1990 and 1991 in a felony drug case pending in the Third Circuit Court ( Kona Division) which resulted in a plea agreement that subsequently involved some incarceration because of violations of the conditions of probation. As a result some irreconcilable differences arose between us, including issues of credibility.

3. For several years thereafter, my former law office associate Paul J. Cunney, represented the defendant numerous times in additional drug and criminal cases filed in State court, but I never dealt with him again personally.

4. Following my appointment as appellate counsel I contacted his former counsel Craig Kimsel for the file and learned that the defendant was the same Eric Ho that I represented fifteen years ago, who had demanded Mr. Kimsel to file a Rule 40 petition to set aside his Third Circuit conviction based upon my ineffectiveness. I was further informed that he had requested attorney Kimsel to challenge all of his prior convictions on the same grounds which was not done.

5. When Mr. Kimsel failed to carry out his wishes and did not file an appeal, which the attorney says was never requested, the Defendant filed a complaint with the Office of Disciplinary Counsel, alleging various grounds of ineffectiveness, which resulted in Mr. Kimsel's withdrawal from further representation.

6. Based on the information provided by Mr. Kimsel, including the 82 month downward departure, and my own recollection of the defendant's attitudes, credibility and demands, I believe a conflict of interest exists between the Defendant and myself which limits my ability to represent him, particularly when an appeal would be limited to counsel's ineffectiveness.

7. Inasmuch as Mr. Ho is unhappy with my prior services, as well as Mr. Kimsel's, it is respectfully requested that declarant be allowed to withdraw as counsel and a new attorney be appointed or substituted for any further proceedings in this matter.

I declare under penalty of law that the of law that the foregoing allegations are true and correct to the best of my knowledge.

DATED: Honolulu, Hawaii, May 22, 2006.

A handwritten signature in dark ink, reading "Arthur E. Ross". The signature is written in a cursive style with a horizontal line underneath the name.

ARTHUR E. ROSS  
Attorney for Defendant  
ERIC K. HO

U.S.A. vs. ERIC K. HO (02) CR. NO. 05-00027 JMS